IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 2801 OF 1995

1.Bombay Municipal Corporation

Mahanagar Palika Marg,

Fort, Bombay - 400 001.

2. Shri Sharad Kale

Municipal Commissioner,

Mahanagar Palika Marg, Fort,

Bombay -400 001.

3. Shri N.B.Rakhade

Dy.Chief Engineer Building Proposals (WS)

Bombay Municipal Corporation,

R.K.Patkar Marg,

Bandra (West) Bombay - 400 050.

4. Shri Sharad Sane

Executive Engineer Building,

Proposals (WS)

Bombay Municipal Corporation,

R.K.Patkar Marg,

Bandra (W) Bombay - 400 050. .. Petitioners

(Orig.Respondents)

v/s

1. Shri Chandrakant Gangaram Sakpal

202, Bhim Nagar Coop Hsg.Soc,Jivraj

Ramji Bhoricha Marg, Sat Rasta,

Bombay - 400 011.

2. Shri Shirish Mahadu Mohite,

Dadar, Kasarwadi, Room No. E-9,

Bombay - 400 016.

.. Respondents
(Or.Complainants)

Mr.M.D.Patil for Petitioner

CORAM : R.M.S.KHANDEPARKAR, J

DATE : 10TH SEPTEMBER, 2004.

ORAL ORDER

1. Heard Advocate for the petitioner.

2. The petitioner challenges the order dated 23rd March, 1995 passed by the Industrial Court in Complaint (ULP) No.206 of 1995. The order is an interim order whereby the Industrial Court while considering the fact that the petitioner's Advocate was absent and they had not filed the reply, to the application for interim relief, ad interim relief earlier granted was directed to remain in force till the disposal of the complaint.

3. Grievance of the petitioner is that the impugned order was passed ex parte without giving any opportunity to the petitioner to file reply to the application for interim relief.

4. The writ petition was filed in June, 1995 and while issuing notice to the respondent ad interim exparte relief was granted on 6th July, 1995 whereby the execution of the impugned order was stayed. The records disclose that till September, 1998 the Petitioner-Corporation did not take any step to serve notice upon the respondents and therefore by an order dated 18th September, 1998 the petitioners were directed to take appropriate steps within two weeks therefrom to serve both the respondents with the warning that in case of failure to take such steps, the petition would be dismissed for non-prosecution. Thereupon necessary steps were taken by the Petitioner-Corporation on 29th September, 1998 for issuance of notices to the respondents. Records further disclose that pursuant thereto, notices were issued. However, notice issued to the respondent no.1 was returned with postal remark " Not claimed". As regards notice issued to the respondent no. 2 it discloses that notice was sought to be pasted on the door at the address of the respondent no. 2. Records at the same time disclose that the respondent no. 2 was not found at the place of the address disclosed by the petitioner on earlier occasions whenever bailiff had tried to contact the respondent no.2.

In the circumstances, mere pasting of notice on the door at the place of residence of the respondent no. 2 disclosed by the petitioner in the petition could hardly be said to be a good service upon the respondent no. 2. Undoubtedly, this Court by an order dated 11th August, 2004 has recorded that in view of postal remark to the effect " Not claimed " in relation to notice to the respondent no.1, it was a good service. However, the fact remains that the respondent no. 2 has not been served till this date.

5. The impugned order reads thus :

> "Respondent its Advocate absent. Respondent sought time to file reply but not filed reply till today. Respondent and Advocate are absent. Hence, issue ad interim reliefs as prayed for till the decision of the complaint. No order as to costs."

The ad interim relief which was granted was obviously in terms of the prayers in the application for interim relief filed by the respondents under section 30 (2) of the M.R.T.U and P.U.L.P.Act, 1971 and the said prayers read as under :

> (i) The respondents be directed to give post of Mukadams in the Building Department to the complainants and also

to other Mukadams whose names are listed in Annexure-B.

(ii) direct the respondents to maintain status quo and not to do posting to the 90 candidates who are selected in the interview for the post of Mukadams in the Building Department."

6. Section 30 (2) of the said Act provides that in any proceeding before it under the said Act, the Court may pass an interim order as it deems just and proper including directions to the persons to withdraw temporarily practice complained of which is an issue in such proceeding pending for final decision provided that the Court may on an application in that behalf review any such interim order passed by it." The provisions of law comprised under sub-section 2 of section 30 of the Act therefore though empower the Court exercising powers under the said Act to issue interim orders, the same also empower the Court to review such orders for justifiable reasons and in proper cases when the aggrieved party approaches the Court for such review of the interim order.

7. In the case in hand, undisputedly the petitioner did not file any such review application. There is no justification given for not filing any such an application for review of the impugned order. Apparently therefore inspite

of there being an alternate efficacious remedy available to the petitioner, without any justifiable cause and reason, the petitioners rushed to this Court by the present petition. On this count itself, the petition is liable to be rejected in limine.

8. Contention of the petitioner that no opportunity was given to the petitioners to file their say and the order was passed ex parte is totally devoid of substance. The order itself records failure on the part of the Advocate for the petitioner to appear in the matter as well as failure on the part of the petitioner to file its reply. Once it is not in dispute that the petitioner was duly served with the notice of the complaint filed by the respondents and an application for ad interim relief and the petitioner itself had failed to file its reply and even to secure presence of its Advocate or representation in Court on the date of hearing, the petitioner cannot be heard to say that there was no opportunity granted to the petitioner to file reply in the matter. Negligence and utter carelessness on the part of the petitioner cannot be a justification to contend that the petitioner did not get fair opportunity to contest the

proceedings. Undoubtedly, the petitioner had requested for time to file reply. However, adjournment is not a matter of right for the party to the proceeding. The petitioner had no reason to presume that moment they had asked for adjournment, the Court was obliged to grant the same. It was necessary for the petitioner to prepare the reply in time and to file the same in answer to the application filed by the respondents.

9. It pains to note that this is not the only case wherein the Corporation had failed to file its reply in time before the lower court. Even in this Court time and again it is noticed that the Corporation hardly files its replies in time. It has become a practice for the Corporation to ask the adjournment in each and every case as the matter of course and as a matter of right. It is high time that the Corporation should realise that it is its duty to co-operate with the Court to dispose of the matters as expeditiously as possible and in that regard to render necessary assistance to the Court and not to seek adjournment time and again in each and every matter.

10. As I do not find any justification for interference in the impugned order and since the

petitioner has an alternate efficious remedy under the statutotry provisions comprised under proviso to section 30 (2) of the said Act and there being no substance in the contentions about failure on the part of the Industrial Court to give an opportunity to the petitioner to put forth their say in the matter, the petition is liable to be rejected with costs and is accordingly rejected with costs of Rs.2000/-. Costs to be paid within a period of four weeks in the Registry and on payment thereof, the same shall be credited to the account of Maharashtra State Legal Services Authority.

11. The registry to forward a copy of this order to the Commissioner, Municipal Corporation of Gr. Mumbai forthwith.

12. Authenticated copy allowed.

(R.M.S.KHANDEPARKAR, J)